

## Special Investigative Units Regulations

### REVISED TEXT

#### Subchapter 9 Insurance Fraud

#### Article 2 Special Investigative Unit Regulations

#### Section 2698.30

#### Definitions

As used in this article, the following definitions shall apply:

(a) "Act" means any violation of California Code of Regulations, Title 10, Chapter 5, Section 2698.30-42, inclusive.

~~(a)~~ (b) "Authorized governmental agency (agencies)" shall have the same meaning as used in the Insurance Frauds Prevention Act (IFPA).

~~(b)~~ (c) "Claims handler" means every employee and agent of an insurer whose principal responsibilities include the investigation, adjustment, settlement and resolution of claims.

~~(c)~~ (d) "Commissioner" means the Insurance Commissioner of the State of California.

~~(d)~~ (e) "Communication" includes the referral of suspected insurance fraud to the Department of Insurance and providing information and documents requested by the Fraud Division.

~~(e)~~ (f) "Department" means the California Department of Insurance.

~~(f)~~ (g) "Fraud Division" means the California Department of Insurance Fraud Division formerly known as the Bureau of Fraudulent Claims.

(h) "Hearing" means an adjudicative proceeding initiated by the Insurance Commissioner pursuant to the provisions of California Insurance Code Section 1875.24(d).

(i) "Inadvertent" means unintentional, and outside the control of the insurer.

~~(i)~~ (j) "Insurer" means every insurer admitted to do business in this state except the following insurers.

- (2) Title insurers.
- (3) Fraternal fire insurers.
- (4) Fraternal benefit societies.
- (5) Firemen, policemen, or peace officer benefit and relief associations.
- (6) Grant and annuity societies.
- (7) Home protection.

~~(j)~~ (k) "Integral anti-fraud personnel" includes insurer personnel who the insurer has not identified as being directly assigned to its SIU but whose duties may include the processing, investigating, or litigation pertaining to payment or denial of a claim or application for adjudication or claim or application for insurance.. These personnel may include claims handlers, underwriters, policy handlers, call center staff within the claims or policy function, legal staff, and other insurer employee classifications that perform similar duties.

~~(k)~~ (l) "Reasonable belief" is a level of belief that an act of insurance fraud may have or might be occurring for which there is an objective justification based on articulable fact(s) and rational inferences therefrom.

~~(l)~~ (m) "Red flag" or "red flag event" means facts, circumstances or events which, singly or in combination, support(s) an inference that insurance fraud may have been committed.

~~(m)~~ (n) "Regulations" means these regulations, California Code of Regulations, Title 10, Chapter 5, Subchapter 9, Article 2.

~~(n)~~ (o) "Special Investigative Unit" (SIU) means an insurer's unit or division that is established to investigate suspected insurance fraud. The SIU may be comprised of insurer employees or by contracting with other entities for the purpose of complying with applicable sections of the Insurance Frauds Prevention Act (IFPA) for the direct responsibility of performing the functions and activities as set forth in these regulations.

~~(o)~~ (p) "Suspected insurance fraud" includes any misrepresentation of fact or omission of fact pertaining to a transaction of insurance including claims, premium and application fraud. These facts may include evidence of doctoring, altering or destroying forms, prior history of the claimant, policy holder, applicant or provider, receipts, estimates, explanations of benefits (EOB), medical evaluations or billings, medical provider notes (commonly known as SOAPE notes); Subjective complaint, Objective findings, Assessment, Plan and Evaluation, Health Care Financing Administration (HCFA) forms, police and/or investigative reports, relevant discrepancies in written or oral statements and examinations under oath (EUO), unusual policy activity and falsified or untruthful application for insurance. An identifiable pattern in a claim history may also suggest the possibility of suspected fraudulent claims activity. A claim may contain evidence of suspected insurance fraud regardless of the payment status.

~~(p)~~ (q) "The Insurance Frauds Prevention Act" or "(IFPA)" shall refer to California Insurance Code section 1871 et seq. 1871-1879.8.

(r) "Willful" means a purpose or willingness to commit the act or make the omission referred to in the California Insurance Code or in these regulations. ~~It does not require any intent to violate the law or to injure another.~~ The Commissioner shall use the factors set forth at California Code of Regulations Section 2591.3(d)(1)(A-E) to determine whether or not an act is willful.

NOTE: Authority: Insurance Code Sections ~~1871 et seq.~~, **1871-1871.9**, ~~1871.2(b)~~, 1872.4, 1873, 1873.3(b), 1874.2, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1877.1, 1877.3, **1879-1879.6**, 9080, 10970, 11400, 11520, 11760, 11880, 12400.1, 12743, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, ~~and~~ 1875.24 and **1879-1879.6**.

#### **Section 2698.31**

#### **Insurer Responsibility**

The insurer shall comply with applicable sections of the IFPA and these regulations regarding the establishment, operation and continuous existence of an SIU.

NOTE: Authority: Insurance Code Sections ~~1871 et seq.~~, **1871-1871.9**, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, **1879-1879.6**, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, ~~and~~ 1875.24 and **1879-1879.6**.

#### **Section 2698.32**

#### **SIU Staffing**

(a) Adequacy. The adequacy of an insurer's SIU staffing shall be determined by its demonstrated ability to establish, operate and maintain an SIU that is in compliance with these regulations. Factors that may be considered in staffing the SIU include, but not limited to, the number of policies written and individuals insured in California, number of claims received with respect to California insureds on an annual basis, volume of suspected fraudulent California claims currently being detected and other factors relating to the vulnerability of the insurer to insurance fraud.

(b) Knowledge. An SIU shall be composed of employees who have knowledge and/or experience in general claims practices, the analysis of claims for patterns of fraud, and current trends in insurance fraud, education and training in specific red flags, red flag events, and other

criteria indicating possible fraud. They shall have the ability to conduct effective investigations of suspected insurance fraud and be familiar with insurance and related law and the use of available insurer related database resources.

NOTE: Authority: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1879-1879.6, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24 and 1879-1879.6.

### **Section 2698.33**

### **SIU Contracted Responsibilities**

(a) Any contract entered into by an insurer, or an entity under contract with an insurer as provided under these regulations, shall not relieve the insurer of any obligation under these regulations or the IFPA.

(b) Notwithstanding any other provisions of these regulations, a complete and executed copy of any such agreement, including all attachments, exhibits and amendments thereto, shall be provided to the Fraud Division on execution.

(c) Any contract entered into by an insurer under this section shall:

(1) Specify all SIU duties and functions to be performed by the parties to the contract and how the insurer monitors performance of the contract responsibilities;

(2) Not include provisions that could provide disincentives to the referral and/or investigation of suspected insurance fraud;

(3) Not include provisions that purport to relieve an insurer of any obligation to comply with the requirements of these regulations and the IFPA; and

(4) Expressly include a provision to require the contracted entity to comply with all applicable provisions of the IFPA and these regulations.

NOTE: Authority: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1879-1879.6, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24 and 1879-1879.6.

**Section 2698.34      Communication with the Fraud Division and Authorized Governmental Agencies.**

(a) The insurer and any entity performing the SIU function(s) shall comply with specific sections of the IFPA regarding communication with the Fraud Division and authorized governmental agencies.

(b) On written request by the Fraud Division or an authorized governmental agency, an insurer or its agents, shall release in a timely and complete manner any or all relevant information deemed important that the insurer may possess relating to any specific incident of insurance fraud. Such information shall include:

- (1) Insurance policy information;
- (2) Applications;
- (3) Policy premium payment records;
- (4) History of claims;
- (5) Information relating to the carrier's investigation, including statements, proof and notice of loss;
- (6) Claim file documents;
- (7) Claim notes;
- (8) Investigation files;
- (9) Investigator notes; and
- (10) Other information which the Fraud Division or an Authorized Governmental Agency may deem relevant and important.

(c) For the purpose of this section, timely release of information means immediate, but no more ~~than~~ ~~than twenty one (21)~~ thirty (30) calendar days after the request unless otherwise agreed to by the Fraud Division.

~~(d) The insurer shall designate a person within the SIU to serve as a contact person to receive written requests from authorized governmental agencies. A single written request to a designated contact person within the SIU shall be considered sufficient to compel production of all information deemed relevant by the requesting governmental agency relating to any specific insurance fraud investigation, at the time the request is made and subsequent to require production of the requested records by the insurer named in the request and the records of all persons, agents and brokers employed by and conducting business on behalf of the insurer. The single request is applicable throughout the duration of the investigation and is applicable to the requested records of the insurer named in the request and the records of all persons, agents and brokers employed by and conducting business on behalf of the insurer.~~

NOTE: Authority: Insurance Code Sections 1872.3, 1872.4, 1873, 1874.2, 1874.4, 1875.4, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1877.1, 1877.2, 1877.3, 1877.4, 1877.5,

**1879-1879.6**, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24 and **1879-1879.6**.

### **Section 2698.35**

### **Detecting Suspected Insurance Fraud.**

(a) An insurer's integral anti-fraud personnel are responsible for identifying suspected insurance fraud during the handling of insurance transactions and referring it to the SIU as part of their regular duties.

(b) The SIU shall establish, maintain, distribute and monitor written procedures to be used by the integral anti-fraud personnel to detect, identify, document and refer suspected insurance fraud to the SIU. The written procedures shall include a listing of the red flags to be used to detect suspected insurance fraud for the insurer.

(c) The procedures for detecting suspected insurance fraud shall provide for comparison of any insurance transaction against:

- (1) Patterns or trends of possible fraud;
- (2) Red flags;
- (3) Events or circumstances present on a claim;
- (4) Behavior or history of person(s) submitting a claim or application; and
- (5) Other criteria that may indicate possible fraud.

NOTE: Authority: Insurance Code Sections 1871 et seq., 1871-1871.9, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1879-1879.6, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24 and **1879-1879.6**.

### **Section 2698.36**

### **Investigating Suspected Insurance Fraud.**

(a) The SIU shall establish, maintain, distribute and adhere to written procedures for the investigation of possible suspected insurance fraud. An investigation of possible suspected insurance fraud shall include:

- (1) A thorough analysis of a claim file, application, or insurance transaction.

- (2) Identification and interviews of potential witnesses who may provide information on the accuracy of the claim or application.
- (3) Utilizing industry-recognized databases.
- (4) Preservation of documents and other evidence.
- (5) Writing a concise and complete summary of the investigation, including the investigator's ~~conclusions~~ findings regarding the suspected insurance-fraud and the basis for their findings.

NOTE: Authority: Insurance Code Sections ~~1871 et seq.~~, **1871-1871.9**, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, **1879-1879.6**, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, **and** 1875.24 **and 1879-1879.6.**

#### **Section 2698.37**

#### **Referral of Suspected Insurance Fraud.**

- (a) The SIU shall provide for the referral of acts of suspected insurance fraud to the Fraud Division and, as required, district attorneys.
- (b) Referrals shall be submitted in any insurance transaction where the facts and circumstances create a reasonable belief that a person or entity may have committed or is committing insurance fraud.
- (c) Referrals shall be made within the period specified by statute
- (d) The requirements of this section do not affect the immunity granted under California Insurance Code section 1872.5 or other such similar codes contained in the Insurance Frauds Prevention Act.
- (e) The requirements of this section do not diminish statutory requirements contained in the Insurance Frauds Prevention Act regarding the confidentiality of any information provided in connection with an investigation.

NOTE: Authority: California Civil Code Section 1708 Insurance Code Sections ~~1871 et seq.~~, **1871-1871.9**, 1872.4, 1872.5, 1873.2, 1874.2, 1874.4, 1874.6, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1875.4; **1877.3** ~~1877.5~~, **1879-1879.6**, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, and 1877.3 and 1879-1879.6.

**Section 2698.38**

**Referral Content**

A referral of an act of suspected insurance fraud to the Fraud Division shall be legible and on a form as directed by the Department and contain the information and data to the extent applicable, as provided in the following:

- (a) Fraud and referral type
  - (1) Fraud type
  - (2) New referral/amended referral indicator
- (b) Reporting party information
  - (1) Reporting party type
  - (2) Reporting party name
  - (3) Reporting party California Company number
  - (4) Reporting self-insured/contracted third party license number, as appropriate
  - (5) Reporting party address, city, state and zip code
  - (6) Reporting party email address (generally, contact address)
- (c) Alleged victim information, as appropriate
  - (1) Alleged victim company name
  - (2) Alleged victim California Company number
  - (3) Alleged victim self-insured number
  - (4) Alleged victim address, city, state and zip code
- (d) Insurance policy or claim information, as appropriate
  - (1) Claim number associated with referral
  - (2) Insurance policy number associated with referral
  - (3) Date of loss or injury
  - (4) Geographic location where loss or injury occurred
  - (5) Insurance premium dollar loss
  - (6) Total potential loss on claim prior to the identification of fraud
  - (7) Total claim loss paid to date
  - (8) Actual suspected fraudulent loss amount paid to date
  - (9) A complete synopsis of all the facts on which the reasonable belief of the insurance fraud is based.



- (10) Disaster claim indicator
- (e) Other agency referral information, as appropriate
- (1) Names of other authorized governmental agencies receiving this referral
- (2) Names of any District Attorney's Office receiving this referral
- (3) National Insurance Crime Bureau (NICB) referral indicator
- (4) The names of any other agencies receiving this referral
- (f) Referral contact information, as appropriate
- (1) Referral contact name and phone number
- (2) Claim or case file handler and phone number
- (3) Name and phone number of person who completed referral
- (4) Date referral was completed
- (g) Information for each party associated with the referral
- (1) Identification of the role of the party to the loss
- (2) Phone number
- (3) Address, city, state and zip code
- (4) Date of birth or age
- (5) Social security number
- (6) Tax identification number
- (7) Drivers license number
- (8) State of party's drivers license
- (9) Vehicle license plate number
- (10) Vehicle license plate state
- (11) Vehicle identification number
- (12) Other names or identifiers used by the party
- (13) Claim of injury indicator

NOTE: Authority: Insurance Code Sections 1872.4, 1874.2, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, and 1877.3, ~~1879.5, 1879-1879.6,~~ 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, and 1877.3 and 1879-1879.6.

## **Section 2698.39**

## **Anti-Fraud Training**

Requirements for training provided by and for the SIU shall include:

- (a) The insurer shall establish and maintain an ongoing anti-fraud training program, planned and conducted to develop and improve the anti-fraud awareness skills of the integral anti-fraud personnel.
- (b) The insurer shall designate an SIU staff person to be responsible for coordinating the ongoing anti-fraud training program.
- (c) The anti-fraud training program shall consist of three (3) levels:
  - (1) All newly- hired employees shall receive an anti-fraud orientation within ninety (90) days of commencing assigned duties. The ~~training~~ orientation shall provide ~~instruction on~~ information regarding:
    - ⌘ (A) the function and purpose of the SIU;
    - ⌘ (B) an overview of fraud detection and referral of suspected ~~fraudulent claims~~ insurance fraud to the SIU for investigation;
    - ⌘ (C) a review of Fraud Division insurance fraud reporting requirements;
    - ⌘ (D) an organization chart depicting the insurer's SIU; and
    - ⌘ (E) SIU contact telephone numbers.
  - (2) Integral anti-fraud personnel shall receive annual anti-fraud in-service training, which shall include:
    - ⌘ (A) review of the function and purpose of the SIU;
    - ⌘ (B) introduction/review of the written procedures established by the SIU regarding the identification, documentation and referral of incidents of suspected fraud to the SIU;
    - ⌘ (C) identification and recognition of red flags or red flag events;
    - ⌘ (D) any changes to current procedures for identifying, documenting and referring incidents of suspected insurance fraud to the SIU;
    - ⌘ (E) Fraud Division insurance fraud reporting requirements; and
    - ⌘ (F) introduction/review of existing and new, emerging insurance fraud trends.
  - (3) The SIU personnel shall receive continuing anti-fraud training that includes:
    - ⌘ (A) investigative techniques;
    - ⌘ (B) communication with the Fraud Division and authorized governmental agencies;
    - ⌘ (C) fraud indicators;
    - ⌘ (D) emerging fraud trends; and
    - ⌘ (E) legal and related issues.

(d) Records of the anti-fraud training provided to all staff shall be prepared at the time training is provided and be maintained and available for inspection by the Department on request. The training records shall include the title and date of the anti-fraud training course, name and title and contact information of the instructor(s), description of the course content, length of the training course, and the name and job title(s) of participating personnel.

NOTE: Authority: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1879-1879.6, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24, and 1879-1879.6.

#### **Section 2698.40**

#### **SIU Annual Report**

(a) Each insurer shall file a report as prescribed herein, at the time its initial Certificate of Authority is issued, and annually thereafter. The annual report shall be due no later than 90 days after the date of mailing of the notification by the Department. The Department shall issue the notification in June of each year.

(b) A complete, accurate and truthful annual report shall be submitted on a form as prescribed by the Department and shall include the following information.

~~1.~~ (1) The name(s), title(s) and contact information of the insurer's SIU personnel, or

~~2.~~ (2) The name of the organization and organizational contacts with whom the insurer has contracted for the maintenance of the SIU or any function thereof, and

~~3.~~ (3) The names of personnel whose duties include communication with the Fraud Division on matters related to the reporting, investigation and prosecution of suspected fraudulent claims or other suspected insurance fraud.

~~4.~~ (4) A description of the insurer's methods and written procedures used for detecting, investigating and reporting suspected insurance fraud.

~~5.~~ (5) A description of the insurer's plan for initial and on-going fraud education and training for integral anti-fraud personnel pursuant to these regulations.

~~6.~~ (6) A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of suspected insurance fraud.

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~~7.~~ (7) A description of how the SIU is adequately staffed to meet the requirements herein and the expertise of the staff.

~~8.~~ (8) The number of claims processed by the insurer and the number of claims referred to the SIU, for each reported company, for the past calendar year.

~~9.~~ (9) The number of incidents of suspected insurance fraud reported to the Department and to district attorney offices, for each reported company, for the past calendar year.

~~10.~~ (10) A description of any significant, anticipated changes to the insurer's structure and operations.

~~11.~~ (11) Insurers who enter into contracts for the purpose of compliance with these regulations shall provide a complete copy of the fully executed, existing contract, including all attachments and addendum, to the Department and shall specify the manner in which the contract is monitored.

~~12.~~ (12) The number and type of civil actions initiated by each reported company alleging acts of insurance fraud during the preceding calendar year.

(c) A statement signed under penalty of perjury pursuant to the laws of the state of California, must accompany all reports mentioned herein. This statement must be signed by an officer of the holder of or applicant for the Certificate of Authority who attests to the accuracy of the reported information and the signor's personal knowledge of the existence and proper maintenance of an SIU described in this report and these regulations.

(d) The insurer is to maintain a copy of the annual report that will be available for review during examinations as conducted pursuant to section 2698.41 of these regulations or as otherwise requested by the Department.

(e) For the purpose of these regulations, the name(s) of the insurer's personnel who will communicate with the Fraud Division shall not be made part of the public record and shall be released only pursuant to the provisions of CIC Section 1873.1 applicable to information acquired pursuant to Article 3 of the Insurance Frauds Prevention Act.

NOTE: Authority: Insurance Code Sections 1871.7, 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, 1879-1879.6, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24 and 1879-1879.6.

## **Section 2698.41**

### **Examinations**

- (a) The commissioner may conduct examinations of an insurer's SIU and related operations, including operations undertaken by entities under contract with the insurer, as deemed necessary to determine compliance with the requirements of this article.
- (b) A written report of examination, including identification of violations of these applicable provisions of statute and regulation and required corrective action, if any, will be provided to the insurer on completion of the examination.
- (c) (1) Notwithstanding any penalty imposed pursuant to the regulations, within thirty (30) days of receipt of a written report identifying any violation(s) of these regulations, an insurer shall submit to the Department a plan demonstrating how the insurer will correct such violation(s) and achieve compliance. Such plan shall be subject to examination by the Department. If accepted by the Department, the plan shall be submitted as a supplement to any existing annual report and shall be accompanied by a statement of an officer of the insurer as otherwise required for annual reports. Failure to submit a corrective action and compliance plan or to comply with such plan when accepted by the Department shall be considered a violation of these regulations.
- (2) Any insurer submitting a written report pursuant to Subsection 2698.41 (c)(1) setting forth a corrective action plan may also submit any of the following information to the Commissioner in conjunction with the report required by Subsection 2698.41 (c)(1):
- (A) any written material that may rebut any matters contained in the examination report.
- ~~(3) The Commissioner may consider any rebuttal information submitted pursuant to this subsection in determining whether any penalty shall be assessed, and if so, in what amount the amount of any penalty assessed pursuant to this subchapter article.~~

NOTE: Authority: Insurance Code Sections 730 et. seq., 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, **1879-1879.6**, 12921.(a) and 12926, Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, **and 1875.24**, **and 1879-1879.6**.

## **Section 2698.42**

### **Penalties**

- ~~(a) On notice and hearing in accordance with Government Code sections 11550 et seq., the Commissioner may impose sanctions for violation of these regulations and/or Article 5.6 (commencing with section 1875.20) of the California Insurance Code.~~

~~(b) Notwithstanding any other provisions of law, for each act in violation of these regulations an insurer will be subject to a penalty of not more than \$55,000 and/or suspension or revocation of the insurer's Certificate of Authority.~~

(a) If the Commissioner acts pursuant to the provisions of California Insurance Code Section 1875.24( c) or (d) and finds that the insurer has failed to comply with the provisions of this article, the Commissioner shall impose a monetary penalty in an amount not to exceed \$5,000 for each act of non-compliance. Where the Commissioner determines that an insurer has willfully failed to comply with this article, the Commissioner may impose a monetary penalty in an amount not to exceed \$ 10,000 for each willful act of non -compliance. The Commissioner shall consider the factors enumerated at California Code of Regulations Title 10 Chapter 5, Subchapter 3,Section 2591.3 (a)-(f) and determine if any of the enumerated factors are applicable to the insurer's conduct in the establishment and operation of its special investigative unit. If the Commissioner finds such factors are applicable to the insurer's conduct, the Commissioner may reduce the amount of the monetary penalty prescribed in subsection 2698.42(a).

(b) If the Commissioner acts pursuant to the provisions of California Insurance Code Section 1875.24(c) or (d) and determines that the acts of non-compliance are inadvertent and are solely relative to the maintenance and operation of the special investigative unit of the insurer, then the Commissioner may consider such violations to be a single act for the purposes of imposition of a monetary penalty that is no greater than \$5,000 for that single act. For all other inadvertent acts, the Commissioner ~~may~~ **shall** impose a penalty in the amount of up to \$5,000 per inadvertent act that is not in compliance with this article.

NOTE: Authority: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, **1879-1879.6**, 12921(a) and 12926; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, **and** 1875.24 **and 1879-1879.6.**

## **Section 2698.43**                      **Hearings**

(a) Any hearing conducted pursuant to these regulations shall be governed by the provisions of California Government code Section 11425.10(a).

(b) The Commissioner shall give 30 days written notice of any hearing held pursuant to these regulations.

NOTE: Authority: California Government Code Section 11425.10(a), Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 1875.24, **1879-1879.6**, 12921(a) and 12926;

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**June 9, 2005**

**Revised Text**

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Reference: California Government Code Section 11425.10(a), Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, and 1875.24 **and 1879-1879.6.**